

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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MAR 18 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Revision of Part 22 and Part 90 of)
the Commission's Rules to Facilitate)
Future Development of Paging Systems)

WT Docket No. 96-18

Implementation of Section 309(j))
of the Communications Act --)
Competitive Bidding)

PP Docket No. 93-253 /

To: The Commission

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COMMENTS OF PAGEMART, INC.

PageMart, Inc. ("PageMart"), by its attorneys, hereby submits its comments in response to the Notice of Proposed Rule Making ("NPRM") issued by the Commission in the above-referenced proceedings. FCC 96-52 (Feb. 9, 1996). PageMart has already submitted both comments (filed March 1, 1996) and reply comments (filed March 11, 1996) with respect to the Interim Licensing Proposal aspect of these proceedings. Those comments and reply comments are incorporated herein.

PageMart is a medium-sized, innovative paging company that provides low-cost, nationwide services. PageMart holds both Part 22 common carrier paging ("CCP") and Part 90 private carrier paging ("PCP") licenses for paging services throughout the United States, including PCP licenses for which it qualifies for nationwide exclusivity.

I. THE INTERFERENCE PROTECTION GRANTED TO EXISTING LICENSEES SHOULD NOT BE DIMINISHED.

In the NPRM, the Commission proposes to alter the criteria under which both CCP and PCP licensees in all bands receive interference protection from neighboring licensees.

¶¶ 45-56. The effect of the new criteria would be not only to change the configuration of licensees' interference contours but, in most cases, to reduce dramatically the area in which licensees enjoy interference protection.

Changing interference contours in this manner would have significant adverse impacts, both on licensees and on users of their services. The FCC's proposed approach would greatly reduce the value of licensees' existing systems, impair licensees' ability to respond to new consumer demands and developments within their service areas, subject licensees to higher levels of interference, cause widespread confusion throughout the industry, and lead to prolonged delay in the licensing process. These substantial disadvantages are certainly not outweighed by the one apparent benefit that the Commission hopes to reap from this proposal: the highly uncertain prospect that the changes might help generate a marginal increase in revenue for the government from the forthcoming auction for paging spectrum.

Currently, interference contours for the various paging bands are calculated according to several different formulae. In the two bands of greatest concern to PageMart -- 929 and 931 MHz -- the Commission grants each licensee a

circular interference contour based on a fixed radius.

(Licensees in the 931 MHz band also are granted a service contour, based on a fixed radius, which fits well inside the interference contour, and a neighboring licensee's interference contour may not overlap an existing licensee's service contour.) The length of this radius (and thus the area of the protected circle) depends on the height of the licensee's tower above average terrain and the power level at which it transmits. See 47 C.F.R. §§ 22.537, 90.495. In no case under the current rules may a licensee place a transmitter within 70 miles of a co-channel licensee's transmitter.

The Commission proposes to change dramatically the method of determining interference and service contours and to use the same method for both the 929 and 931 MHz bands. Under the Commission's proposal, contours would be based, not on a fixed distance, but on the estimated field strength of each transmitter's signal. The Commission proposes to use a field strength of 47 dB μ V/m as the basis for the service contour, and 21 dB μ V/m as the basis for the interference contour.

Under the proposal, licensees will no longer enjoy a uniform circle for their service and interference contours. Rather, the contours will be measured using the "eight-radial contour method," which determines the distance from the transmitter at which field strength is estimated to dip to the relevant 47 or 21 dB μ level along each of the

eight cardinal radials from the transmitter site. Since this eight-radial contour method takes into account variances in terrain along each radial contour and any variances in transmitter power caused by directionalizing the antenna, the point at which the signal reaches the requisite 47 or 21 dB μ level will often be different for each radial contour. The interference and service contours will then each be drawn by connecting the eight points applicable to that contour.

Even in the best case scenario, which assumes no loss of signal strength due to terrain or the directionalizing of antennas, most licensees would lose significant portions of the areas enclosed by their service and interference contours under the new proposal. Licensees that operate at lower power and/or from lower antennas would be particularly disadvantaged. The reason is that, in most cases, using an estimated field strength of 47 and 21 dB μ to calculate service and interference contours, respectively, will cause contours to be drawn much closer to transmitters than they are under the current rules. When terrain and directionalized antennas are taken into account, the reduction in protected area would become even more severe.

By reducing licensees' protected areas, the Commission will severely harm the value of licensees' existing systems. Clearly, the value of a licensee's system is directly related to the size of its service area and the number of customers it is entitled to serve. Paging

operators have relied on the existing rules to design systems, arrange financing, order equipment, build out their systems, and commence service. For the Commission all of a sudden to strip a substantial portion of their protected area away is to throw long-developed plans into uncertainty, undermine licensees' access to capital, and impair licensees' ability to meet consumer demands.

The reconfiguration and reduction of licensees' protected areas will also greatly impair licensees' ability to respond to consumer demands and demographic shifts within their service areas. For example, as population centers grow and shift with new business and residential developments, paging operators under the existing rules can often, without changing their protected contours, re-directionalize or relocate antennas or add new transmitters to meet these changes. Yet, if new rules reduce the size of their protected areas and effectively freeze existing antenna placements, licensees will not be able to respond to such changes. As such, their ability to compete with other CMRS providers will be diminished, and consumers will suffer.

The Commission never explains in the NPRM why it believes service and interference contours based on an estimated field strength of 47 and 21 dB μ , respectively, are appropriate, or how they are adequate to protect licensees from interference. Even under the current standards, certain licensees suffer from interference; significantly

reducing interference protection will exacerbate the problem. Moreover, given the inexactitude of predicting actual propagation and the changes in propagation due to atmospheric conditions, it is unlikely that the proposed eight-radial contour method will work as well in practice as it might in theory to protect licensees from interference.

Finally, the new system proposed by the Commission will cause widespread confusion and lead to great delays in licensing. Currently, licensees can figure out exactly where they can locate transmitters by determining the location, height, and power of co-channel licensees' transmitters and then making a very simple calculation. Under the proposed rules, licensees would have to submit complicated maps of their irregularly-shaped service areas that take into account variations in terrain and directionalization of antennas.

For licensees to add new transmitters, they would have to undergo a complicated and expensive process of, first, obtaining and analyzing these maps and, second, configuring their systems in such a way as not to overlap with the crazy-quilt contours of neighboring co-channel licensees. The potential for delay and dispute seems limitless. At a time when paging operators require a fast, clear and efficient licensing scheme to build out their systems and compete with other CMRS providers, the Commission is proposing a scheme that will serve only to delay and frustrate them.

In the NPRM, the Commission states that the proposed eight-radial contour method "may be preferable to a fixed-radius method because it will more reasonably predict potential interference to incumbents and provide geographic licensees with greater flexibility in placing their facilities." ¶ 50. While the first point may be true, the advantage of such better prediction hardly outweighs the disadvantages that the new method would cause licensees. As for the second point, any system that dramatically reduces incumbents' protected areas will, of course, provide "geographic licensees with greater flexibility in placing their facilities."

This rationale exposes what many paging operators fear is the true motive for the Commission's proposal: a desire to reduce incumbents' holdings so as to maximize potential revenue from the geographic auctions. To act from such a narrow motivation is short-sighted and, as discussed above, highly damaging to the entire paging industry. The Commission should reconsider its proposal and permit the current interference standards to remain valid.

II. THE COMMISSION SHOULD INCREASE THE MAXIMUM POWER FOR 929 MHZ LICENSEES AND ELIMINATE THE HEIGHT-POWER LIMIT.

The Commission proposes in the NPRM to increase the power limit of non-nationwide 929 MHz facilities from 1000 Watts to 3500 Watts in order to conform the rules governing such facilities with those governing 931 MHz,

nationwide 929 MHz, and narrowband PCS facilities. ¶ 57. PageMart supports this proposal. No good reason exists for the continuing disparate treatment of these facilities.

The Commission also proposes to eliminate the height-power limits currently imposed on 929 MHz licensees. ¶ 60. PageMart also supports this proposal: given that the limits have already been removed for 931 MHz licensees, they should be likewise removed for licensees in the 929 MHz band.

III. INCUMBENT LICENSEES THAT WIN LICENSES AT AUCTION, BUT FAIL TO MEET THEIR COVERAGE REQUIREMENTS, SHOULD BE PERMITTED TO RETAIN THEIR EXISTING LICENSES.

In the NPRM, the Commission asks what steps should be taken in a situation where an incumbent licensee wins a geographic license at auction, but subsequently fails to comply with applicable coverage requirements. The Commission proposes that the licensee, in such an event, should have all authorizations reinstated that the licensee held prior to the auction and that are constructed and operating. ¶ 44.

This proposal is a sound one. Geographical licensees that fail to meet their coverage requirements under the rules will already suffer the severe penalty of losing their geographic license paid for at auction. To sanction them further, by revoking the licenses they held prior to the auction, would be excessive and counter-productive. Should the Commission propose such an

additional sanction, incumbent licensees would be discouraged from bidding in any geographic area in which they hold existing licenses, for they would effectively put their existing licenses at risk by winning at auction and then having to meet the Commission's coverage requirements.

IV. THE TERMS OF PREVIOUSLY GRANTED SLOW-GROWTH APPLICATIONS SHOULD BE HONORED.

The Commission proposes in the NPRM to dismiss all "slow growth" applications pending at the time an order pursuant to the NPRM is adopted. ¶ 42. The Commission is silent, however, about whether it will take any action to shorten the length of time allotted to licensees to build out their systems under "slow growth" applications that have previously been granted.

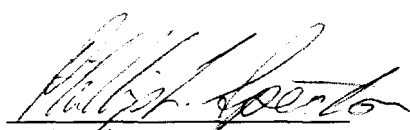
Licensees that have had "slow growth" applications approved have designed their systems, planned their build-out, and arranged for their financing on the reasonable assumption that the Commission would honor the terms of such granted applications. The Commission should clarify in any order issued pursuant to the NPRM that it will indeed honor the terms of previously granted "slow-growth" applications.

V. CONCLUSION

For the reasons stated above, PageMart respectfully urges the Commission to take the steps and modify its proposals in the manner described herein.

Respectfully submitted,

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March 18, 1996